

operator of an airport is reasonable under section 113 of the Federal Aviation Administration Authorization Act of 1994 (August 23, 1994; Pub. L. 103-305; 108 Stat. 1577-1579).

Issued at Washington, DC this 22nd day of February, 1995.

**Federico Peña,**

*Secretary of Transportation.*

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## Federal Railroad Administration

### 49 CFR Part 218

[FRA Docket Number RSOR-11, Notice No. 4]

RIN 2130-AA77

### Protection of Utility Employees Response to Petitions to Reconsider

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule amendments with request for comments.

**SUMMARY:** On August 16, 1993, FRA published safety standards for utility employees working as temporary members of train and yard crews. FRA now amends a definition, responds to the concerns raised in petitions to reconsider the final rule, issues an amendment on a subject addressed earlier in this rulemaking, and makes technical corrections. The amendment will permit single-person crews to work within the protections provided for train and yard crews.

**DATES:** These amendments will become effective May 15, 1995. Comments on the amendments must be received by May 1, 1995.

**ADDRESSES:** Comments on the amendments should be submitted to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** James T. Schultz, Chief, Operating Practices Division, Office of Safety, FRA, RRS-11, Washington, DC 20590 (telephone: 202-366-9252), or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202-366-0443).

**SUPPLEMENTARY INFORMATION:** On August 16, 1993 FRA published a regulation allowing utility crew members to be excluded from the blue signal protection requirements of part 218 while the employee works as a temporary member

of a train or yard crew. 58 FR 43287. FRA believed this rule, which provides new protections for utility employees, would allow more efficient use of railroad personnel without compromising the level of safety provided by the pre-amendment regulations.

In response to this regulatory revision, FRA received several petitions for reconsideration of the new rule, including its rationale and specific provisions of its preamble and text.

### Basis for the Rule

The preamble to the Final Rule explained the agency's rationale for issuing this regulation. Several petitioners continue to object to the rule, arguing that expanding the original train and yard crew exclusion to cover utility employees will create safety risks because the new rule does not provide adequate protection for temporary crew members.

The petitions FRA received from rail labor question the safety data on which FRA partially relied in this rulemaking. One petitioner cites two specific occurrences in 1987 and anecdotal information regarding similar mishaps involving operating crews that the petitioner argues were preventable had there been no exclusion for train and yard crews. (That exclusion, of course, was in FRA's original rule and directly tracked the statutory provision that required the rule.) FRA does not agree that these limited incidents outweigh the remaining safety data. Our conclusion continues to be that utility employees can function safely without blue signal protection under properly structured Federal regulations and railroad operating rules requiring adequate communication and understanding of the work to be performed. FRA notes that the rule does not prevent railroads from enacting more stringent procedures to address isolated safety problems. The agency continues to believe that according a utility employee the same level of protection historically provided to train and yard crews would not risk the employee's safety. Accordingly, FRA will not withdraw the final rule.

FRA has no evidence on which to conclude that crews are currently experiencing a material risk ascribable to unexpected train movements. FRA believes, however, there may be reason to conduct a future rulemaking on protection for all train and yard crew members, given the issues raised in this rulemaking. Many of the issues raised by participants in this rulemaking were beyond the scope of this proceeding and

would be more appropriately addressed in separate agency actions.

### Preamble and Text of Final Rule

FRA received petitions from rail labor and management questioning specific portions of the preamble and rule. FRA responds below to each primary objection.

1. *One-Member Crews.* FRA's notice of proposed rulemaking requested comment on the protection needed for a single locomotive engineer performing helper or hostler service. The notice stated:

FRA is also concerned that protection provided for one-person assignments (i.e., hostlers or other unaccompanied engineers) be consistent with safety and efficiency. FRA specifically invites comments on the circumstances under which these engineers acting alone might be permitted to perform functions outside of the area under control of the mechanical forces without complete blue signal protection as provided under §§ 218.25 (main track) or 218.27 (other than main track).

57 FR 41457.

Protecting one-member crews was therefore within the scope of the notice. FRA chose not to address the subject in rule text because no comments were received. In the preamble to the final rule, however, FRA expressed discomfort with one-member crews. It was stated that a lone engineer could not take advantage of the exclusion from blue signal protection unless joined by a utility employee to ensure that the locomotive cab was always occupied. 58 FR 43287.

The Association of American Railroads (AAR) objected to that preamble statement, arguing that the language of the rule did not seem to bar the use of one-person crews. FRA agrees that the rule does not impose such a prohibition on one-member crews. FRA therefore grants this portion of AAR's request.

Although AAR is correct that the utility employee rule did not, on its face, preclude its application to one-member crews, application of utility protection to such crews would not be logical. The utility employee rule presumes the presence of a permanent crew to which the utility crew member becomes temporarily attached for specific purposes. One-person crews either do not join larger crews or do so to perform duties distinct from those assigned a utility employee. FRA remains concerned with the unique risk faced by lone engineers despite the current lack of evidence of a substantial injury record for one-member crews. An

engineer assigned to helper or hostler service must frequently perform work, such as placing rear end markers or making connections between locomotives, that puts that employee in danger, particularly when this work is performed in congested terminals and rail yards. FRA believes that if single-engineer assignments are not carefully controlled, the industry may risk an entirely avoidable safety problem. Safety can be assured only by providing protection against unexpected movement of equipment equivalent to a crew member occupying the cab. AAR, in its joint submission with the United Transportation Union (UTU) dated March 5, 1993, agreed that crews need to have complete control over the equipment on which they are working. FRA believes this can be achieved and therefore issues a new § 218.24 as an amendment that prohibits an engineer working alone from going on, under, or between rolling equipment to perform inspections, tests, repairs, or servicing without blue signal protection unless all of the following conditions are met:

(1) Each locomotive in the locomotive engineer's charge is either (i) coupled to the train or other railroad rolling equipment to be assisted or (ii) stopped a sufficient distance from the train or rolling equipment to ensure a separation of at least 50 feet; and,

(2) Before a controlling locomotive is left unattended, the one-member crew shall secure the locomotive as follows:

- (i) The throttle is in the IDLE position;
- (ii) The generator field switch is in the OFF position;
- (iii) The reverser handle is removed (if so equipped);
- (iv) The isolation switch is in the ISOLATE position;
- (v) The locomotive independent (engine) brake valve is fully applied;
- (vi) The hand brake on the controlling locomotive is fully applied (if so equipped); and
- (vii) A bright orange engineer's tag (a tag that is a minimum of three by eight inches with the words ASSIGNED LOCOMOTIVE—DO NOT OPERATE) is displayed on the control stand of the controlling locomotive.

If the single-engineer crew is working in helper service, safety must also be assured by effective communication between engineers of controlling locomotives to prevent unexpected movement. Single-engineer helper service crews are most commonly found in heavy grade territory on main track routes, where additional locomotives are added to trains to push or pull trains on steep grades.

FRA believes the single engineer is particularly vulnerable while attaching

his or her locomotive to, or detaching it from, the train to be assisted. FRA provides protection by requiring that communication be established between engineers of controlling locomotives on a common track or working a common train, and these engineers reach an understanding of the work to be performed before taking advantage of the exclusion for train and yard crews. FRA proposes the following language to achieve that purpose:

When assisting another train or yard crew with the equipment the other crew was assigned to operate, a single engineer must communicate directly, either by radio in compliance with Part 220 of this chapter or by oral telecommunication of equivalent integrity, with the crew of the train to be assisted. The crews of both trains must notify each other in advance of all moves to be made by their respective equipment. Prior to attachment or detachment of the assisting locomotive(s), the crew of the train to be assisted must inform the single engineer that the train is secured against movement. The crew of the train to be assisted must not move the train or permit the train to move until authorized by the single engineer.

Use of single-person crews is a relatively recent practice. FRA gave notice in the NPRM of its intent to consider the safety of such crews, but only addressed the issue in the preamble to the final rule. While FRA is not obliged to provide further opportunity to comment, it has decided that soliciting comment is the better course. FRA therefore invites comment on this amendment before it takes effect. FRA will provide a 60-day comment period from the date of publication. At the close of this period, FRA will review the materials received and make necessary adjustments to the amendment.

FRA notes that the contemplated requirements are nearly identical to operating rules of several railroads that currently use single-member crews.

**2. Ranking Crew Member.** Section 218.5 of the Final Rule defined "ranking crew member" as the assigned locomotive engineer, if the person in general charge of the train was not named by the railroad's operating rules. The UTU argued that the definition dilutes the traditional authority of railroad conductors at the expense of safety. In response to these comments, the final rule is modified to permit the designation of the crew member responsible for coordination with the utility employee only by the railroad's operating rules. Accordingly, the last sentence of the definition of "ranking crew member" is deleted, and the term is changed to "designated crew member."

**3. Occupied Locomotive Cab.** Rail management argued that the requirement in § 218.22(b)(2), which requires the locomotive engineer, or another crew member, to be present in the cab of the controlling locomotive in order for the crew to make use of a utility employee, was overly restrictive. FRA believes that a crew member in the controlling locomotive who is aware that others are working on the train can prevent equipment movement that would endanger the crew. This crew member's presence in the cab serves to prevent such events as unexpected couplings when crew members are in jeopardy and is, therefore, an essential element of the exclusion.

**4. Craft lines.** In the Final Rule, at § 218.22(b)(5), FRA clarified the agency's intention not to expand the type of work that could be performed by crews without blue signal protection. In order to accomplish this goal, FRA listed the duties that a utility employee is allowed to perform within the exclusion. This list was intended to be inclusive of all essential and routine duties traditionally performed by crews. Several petitioners objected that the list was incomplete, preventing carriers from making full use of utility employees. FRA disagrees. FRA has, in letters to each petitioner, addressed the duties each has raised. The few specific duties which the petitioners identified as not on the list are in truth parts of jobs listed or jobs which do not require blue signal protection. FRA will not, therefore, amend the list.

A labor union petitioner, the Brotherhood of Railway Carmen (BRC), objected that the list contained duties beyond those traditionally performed by train and yard crews. BRC did not identify the duties to which it objected. The petitioner asserts that the agency therefore acted beyond the scope provided by the notice of proposed rulemaking. FRA disagrees. The Final Rule merely permits utility employees to work like other crew members under specific conditions, which was the expressed intent of the proposed rule.

Rail labor also objected to the preamble explanation that if non-crewmember supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation. This example illustrated FRA's position that blue signal requirements are based on function and not craft. Any title could be used in place of "supervisors." It was not a suggestion that supervisors replace other employees who currently perform

these jobs, as the petitioner seems to fear.

In addition, it should be understood that this rule does not replace existing collective bargaining agreements with respect to assignments of duties. This rule simply defines the limits of the duties a utility employee may perform without traditional blue signal protection. The existence of this rule, however, does not mean that these duties must be assigned to utility employees. But it should be noted that a utility employee must not be assigned responsibilities beyond those listed, without full blue signal protection, regardless of existing labor and management agreements.

5. *Radio Communication.* The rule provides a process for utility employees to join and quit a crew. Integral to this process is communication among crew members, most likely by radio as provided in § 218.22(e). One petitioner, Mr. Alan Thompson, objected to the reliance on radios because of the possibility that radios could malfunction. FRA, however, does not believe it is necessary to amend the communication provisions. A utility employee must not be excluded from blue signal protection unless effective communication is established. If a radio malfunction prevents the required crew notice, then the utility employee must be protected by blue signals unless required communication is achieved by talking in person or other equivalent forms of telecommunications.

6. *Adequate Recordkeeping.* FRA rejects the argument that additional recordkeeping requirements are needed to make the rule enforceable. As noted in the preamble to the Final Rule, railroads are required to maintain hours of service records, accident reports, records of attendance at railroad operating rules classes, and alcohol and drug testing records for all operating personnel, including utility employees. The agency believes these records are sufficient to determine an employee's status for enforcement purposes.

7. *Appendix Examples.* Rail management argued that the examples published in Appendix A to the rule should not include train and yard crews. FRA chose to include all operating employees, as well as utility employees, in the last four examples to highlight the extent of the blue signal regulation. FRA has found that railroads have occasionally utilized operating employees instead of maintenance-of-equipment employees to perform work which requires blue signal protection, under the mistaken impression that the exclusion from blue signal protection

for train and yard crews extends to all work assigned to these employees.

The examples contain no new requirements, but simply illustrate existing law. They are therefore not beyond the scope of this proceeding.

8. *Economic Analysis.* One petitioner, BRC, questioned the amount of the economic benefit FRA stated the rule should create. BRC argued that time spent completing required brake tests was improperly counted as time spent installing and removing end-of-train devices. BRC concluded, therefore, that the time FRA believed would be saved by using utility employees would still be spent performing brake tests. BRC argued, therefore, that there would be less cost savings created by the rule than FRA had estimated, because there would not be an improvement in time preparing a train for departure.

FRA based its savings calculations on the best information available to this agency. No participant, including BRC, provided contrary data. Moreover, contrary to BRC's assertion, FRA's economic analysis did not consider time spent on brake tests as an area where benefits could be created. FRA believes that its cost and benefit calculations accurately reflect the true impact of the final rule.

9. *Penalty Amounts.* One petitioner argued that the penalty amounts contained in an appendix to the rule were inadequate to encourage compliance. The penalty amounts are consistent with the civil penalties levied for other violations of federal railroad safety regulations. FRA does not believe that the penalties are insufficient to promote compliance. The penalty schedule makes clear that FRA has the authority to assess even higher amounts where the facts of a particular violation warrant.

FRA's monitoring of industry application of this rule over the next year will provide evidence of carrier compliance. If safety risks are created by the repeated failure to comply with the rule, FRA has other enforcement options, including compliance or emergency orders.

10. *Technical Correction.* The definition of "locomotive servicing track area" was unintentionally deleted from the Final Rule. That definition is now added to the list of definitions provided in § 218.5.

#### Regulatory Impact Analysis

This amendment to the final rule has been evaluated in accordance with existing policies and procedures and is considered "nonsignificant" under Executive Order 12866. It is not considered to be significant under

Department of Transportation policies and procedures. See 44 FR 11034. The amendment does not materially affect the benefit/cost analysis provided in the final rule.

#### The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. This amendment will have no new direct or indirect economic impact on small units of government, business, or other organizations.

#### Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

#### Paperwork Reduction Act

There are no new information collection requirements associated with this amendment. Therefore, no estimate of a public reporting burden is required.

#### Environmental Impact

This amendment will not have any identifiable environmental impact.

#### List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

#### The Rule

In consideration of the foregoing, FRA amends Part 218 of Title 49, Code of Federal Regulations as follows:

#### PART 218—[AMENDED]

1. The authority for Part 218 is revised to read as follows:

**Authority:** 49 U.S.C. 20101 *et seq.*; and 49 CFR 1.49(m).

2. By amending § 218.5 to remove the definition "Ranking crew member" and to add the following definitions in alphabetical order to read as follows:

#### § 218.5 Definitions.

\* \* \* \* \*

*Designated crew member* means an individual designated under the railroad's operating rules as the point of contact between a train or yard crew

and a utility employee working with that crew.

\* \* \* \* \*

*Locomotive servicing track area* means one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

\* \* \* \* \*

3. By amending § 218.22 to remove the word "ranking" and add, in its place, the word "designated" in the following places:

- a. Section 218.22(c)(3);
- b. Section 218.22(c)(4);
- c. Section 218.22(d); and
- d. Section 218.22(e).

4. Add a new § 218.24 to read as follows:

**§ 218.24 One-person crew.**

(a) An engineer working alone as a one-person crew shall not perform duties on, under, or between rolling equipment, without blue signal protection that complies with § 218.27 or § 218.29, unless the duties to be performed are listed in § 218.22(c)(5) and the following protections are provided:

(1) Each locomotive in the locomotive engineer's charge is either:

(i) Coupled to the train or other railroad rolling equipment to be assisted; or

(ii) Stopped a sufficient distance from the train or rolling equipment to ensure a separation of at least 50 feet; and

(2) Before a controlling locomotive is left unattended, the one-member crew shall secure the locomotive as follows:

(i) The throttle is in the IDLE position;

(ii) The generator field switch is in the OFF position;

(iii) The reverser handle is removed (if so equipped);

(iv) The isolation switch is in the ISOLATE position;

(v) The locomotive independent (engine) brake valve is fully applied;

(vi) The hand brake on the controlling locomotive is fully applied (if so equipped); and

(vii) A bright orange engineer's tag (a tag that is a minimum of three by eight inches with the words ASSIGNED LOCOMOTIVE—DO NOT OPERATE) is displayed on the control stand of the controlling locomotive.

(b) When assisting another train or yard crew with the equipment the other crew was assigned to operate, a single engineer must communicate directly, either by radio in compliance with Part 220 of this chapter or by oral telecommunication of equivalent integrity, with the crew of the train to

be assisted. The crews of both trains must notify each other in advance of all moves to be made by their respective equipment. Prior to attachment or detachment of the assisting locomotive(s), the crew of the train to be assisted must inform the single engineer that the train is secured against movement. The crew of the train to be assisted must not move the train or permit the train to move until authorized by the single engineer.

**Appendix A to Part 218 [Amended]**

5. In Appendix A to Part 218—Schedule of Civil Penalties, a new entry is added in numerical order under Subpart B to the penalty schedule to read as follows:

Section	Viola- tion	Willful viola- tion
Subpart B—Blue signal protection of workers:		
* * *	*	*
218.24 One-person crew:		
(a)(1) equipment not coupled or insufficiently separated .....	\$2,000	\$4,000
(a)(2) unoccupied locomotive cab not secured .....	5,000	7,500
(b) helper service .....	2,000	4,000
* * *	*	*

Issued in Washington, DC, on February 15, 1995.

**Jolene M. Molitoris,**  
*Federal Railroad Administrator.*

[FR Doc. 95-4761 Filed 2-28-95; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 204**

[Docket No. 950203036-5036-01; I.D. 012495B]

**OMB Control Numbers for NOAA Information Collection Requirements; Revision of Table**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule, technical amendment.

**SUMMARY:** NMFS corrects and updates the table containing Office of Management and Budget (OMB) control numbers for NOAA information collection requirements. The intent is to comply with the requirement of the Paperwork Reduction Act (PRA) that

agencies display current OMB control numbers for each agency information collection requirement, and to make this information available to the public.

**EFFECTIVE DATE:** March 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** George H. Darcy, NMFS, 301/713-2344.

**SUPPLEMENTARY INFORMATION:** Part 204 of title 50 CFR displays control numbers assigned to NMFS information collection requirements by OMB, pursuant to the PRA, for the public's information. Part 204 fulfills the requirements of sec. 3507(f) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement.

This final rule, technical amendment, brings part 204 up to date and corrects omissions and errors by revising the table in § 204.1(b) to reflect the most current list of OMB control numbers associated with NMFS information collection requirements contained in regulations appearing in title 50. All of the collection-of-information requirements displayed in § 204.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of title 50; this final rule does not involve any new reporting or recordkeeping requirements.

**Classification**

Because this rule only corrects omissions and other errors and brings an existing table up to date for the purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and imposes no new requirements or restrictions on the public, NMFS finds good cause to make it immediately effective under 5 U.S.C. 553(d).

This rule is exempt from review under E.O. 12866.

**List of Subjects in 50 CFR Part 204**

Reporting and recordkeeping requirements.

Dated: February 23, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 204 is amended as follows: